IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33626

STATE OF IDAHO,	)	**2008 Unpublished Opinion No. 673**
	)	
Plaintiff-Respondent,	)	**Filed: October 7, 2008**
	)	
v.	)	**Stephen W. Kenyon, Clerk**
	)	
JUAN BENITO MARTINEZ,	)	**THIS IS AN UNPUBLISHED**
	)	**OPINION AND SHALL NOT**
Defendant-Appellant.	)	**BE CITED AS AUTHORITY**
	)	

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Gregory M. Culet, District Judge.

Judgment of conviction for second degree murder, affirmed.

Molly J. Huskey, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

PERRY, Judge

Juan Benito Martinez appeals from his judgment of conviction for second degree murder. Specifically, Martinez challenges the district court's order denying his motion to suppress. For the reasons set forth below, we affirm.

I.
FACTS AND PROCEDURE

While under suspicion for aggravated battery and homicide, Martinez was arrested on an unrelated warrant. He was advised of his *Miranda*[1] rights in the back of a police car at the scene of the arrest. When the police officer asked Martinez if he understood his rights, he nodded his head affirmatively. No question was asked, nor was any statement made, regarding Martinez's waiver of his rights or continued desire to speak with police. Martinez was transported to a jail

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[1] *See Miranda v. Arizona*, 384 U.S. 436 (1966).

in the neighboring county where he was suspected of battery and homicide, and approximately an hour after his arrest, he was interrogated by the officer regarding those crimes. The officer did not re-advise Martinez of his *Miranda* rights, nor seek to obtain a waiver. Martinez subsequently made incriminating statements about the homicide.

Martinez was charged with second degree murder. I.C. §§ 18-4001, -02, -03(g). Martinez filed a motion to suppress the incriminating statements made during his custodial interrogation as violating the Fifth Amendment, reasoning that he did not knowingly and intelligently waive his rights. The district court denied Martinez's motion holding that the totality of the circumstances demonstrated that Martinez had knowingly and intelligently waived his rights when he made statements to police after being advised of his rights and indicating that he understood them. Martinez entered a conditional guilty plea to second degree murder and the state dismissed an aggravated battery charge in another case. Martinez was sentenced to a unified term of life imprisonment, with a minimum period of confinement of ten years. Martinez appeals, challenging the district court's order denying his motion to suppress the incriminating statements made during his custodial interrogation.

II.
ANALYSIS

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court's findings of fact that are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found. *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. *State v. Valdez-Molina*, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); *State v. Schevers*, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999).

Any waiver of *Miranda* rights or the underlying constitutional privilege against self-incrimination must be made knowingly, voluntarily, and intelligently. *State v. Dunn*, 134 Idaho 165, 169, 997 P.2d 626, 630 (Ct. App. 2000). The state bears the burden of demonstrating that an individual has knowingly, voluntarily, and intelligently waived his or her rights by a preponderance of the evidence. *State v. Doe*, 131 Idaho 709, 712, 963 P.2d 392, 395 (Ct. App. 1998). A trial court's conclusion that a defendant made a knowing and voluntary waiver of his

or her *Miranda* rights will not be disturbed on appeal where it is supported by substantial and competent evidence. *State v. Luke*, 134 Idaho 294, 297, 1 P.3d 795, 798 (2000). An appellate review of this waiver issue encompasses the totality of the circumstances. *State v. Johnson*, 126 Idaho 859, 863, 893 P.2d 806, 810 (Ct. App. 1995).

In this case, Martinez affirmatively nodded his head when asked if he understood his *Miranda* rights. He then later made incriminating statements during the course of his interrogation. The district court held that, because Martinez indicated that he understood his *Miranda* rights and then proceeded to make incriminating statements nonetheless, he had impliedly waived them. In *North Carolina v. Butler*, 441 U.S. 369, 373 (1979), the United States Supreme Court held that an express oral or written waiver is not necessarily required.

> An express written or oral statement of waiver of the right to remain silent or of the right to counsel is usually strong proof of the validity of that waiver, but is not inevitably either necessary or sufficient to establish waiver. The question is not one of form, but rather whether the defendant in fact knowingly and voluntarily waived the rights delineated in the *Miranda* case. As was unequivocally said in *Miranda*, mere silence is not enough. That does not mean that the defendant's silence, coupled with an understanding of his rights and a course of conduct indicating waiver, may never support a conclusion that a defendant has waived his rights. The courts must presume that a defendant did not waive his rights; the prosecution's burden is great; but in at least some cases waiver can be clearly inferred from the actions and words of the person interrogated.

Whether a defendant who understands his or her *Miranda* rights can impliedly waive them by subsequently making incriminating statements, was left for a case by case determination.

On prior occasions this Court has addressed the effect that a defendant's understanding of his or her *Miranda* rights, after being properly advised, has on the admissibility of subsequent incriminating statements. We have consistently held that, absent intimidation, coercion or an unambiguous assertion of the *Miranda* rights, a defendant who knows and understands his or her rights can waive them if he or she proceeds to make incriminating statements by voluntarily responding to police questioning. *See State v. Butcher*, 137 Idaho 125, 132, 44 P.3d 1180, 1187 (Ct. App. 2002) (holding that defendant who was advised of his *Miranda* rights, refused to sign waiver form, and then made incriminating statements to police, had effectively waived his rights); *State v. Jaco*, 130 Idaho 870, 874, 949 P.2d 1077, 1081 (Ct. App. 1997) (holding that defendant who was advised of his *Miranda* rights and clearly understood them, waived them

when he voluntarily responded to police questioning); *State v. Brennan*, 123 Idaho 553, 557-58, 850 P.2d 202, 206-07 (Ct. App. 1993) (holding that defendant who was advised of *Miranda* rights and later demonstrated that he understood them by invoking the right to counsel, had waived those rights as they pertained to incriminating statements made prior to invoking the right to counsel). *See also* WAYNE R. LAFAVE, ET AL., 2 CRIMINAL PROCEDURE § 6.9(d) (3d ed. 2007) (arguing that a defendant's subsequent conduct becomes more significant, in terms of waiver, when that defendant clearly understands his or her rights).

In this case, the totality of the facts and circumstances demonstrate that Martinez clearly acknowledged that he understood his rights and then voluntarily responded to police questioning. At no point did Martinez demonstrate any equivocation in responding to the questioning, and there is no evidence that he was subjected to intimidation or coercion. A better procedure would be for the police to seek an express waiver after a suspect has been advised of his or her *Miranda* rights; however, that is not constitutionally mandated. An implied waiver was properly found when Martinez was advised of his *Miranda* rights, indicated that he understood them, and then knowingly made incriminating statements. Therefore, the district court did not err in denying Martinez's motion to suppress.

III.
CONCLUSION

Martinez's incriminating statements were made knowingly, voluntarily, and intelligently after he was advised of his *Miranda* rights and indicated that he understood them. The officer was not constitutionally required to seek an express waiver or ascertain Martinez's continued desire to speak to police when he fully understood his right to remain silent or to have counsel present. Therefore, the district court did not err in denying Martinez's motion to suppress. Accordingly, Martinez's judgment of conviction for second degree murder is affirmed.

Chief Judge GUTIERREZ and Judge LANSING, **CONCUR.**